

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

MICHAEL YOST,)	
)	
Petitioner,)	
)	
v.)	Civ.Act.No. 07-838-SLR
)	
RAPHAEL WILLIAMS, Warden)	
and JOSEPH R. BIDEN, III, Attorney)	
General for the State of Delaware)	
)	
Respondents.)	

MOTION FOR EXTENSION OF TIME

Pursuant to Rule 6 of the Federal Rules of Civil Procedure, respondents move for an extension of time in which to file an answer to the petition. In support thereof, respondents state the following:

1. Michael Yost has applied for federal habeas relief, alleging error by the state courts. D.I. 1. By order of this Court, respondents' answer is due to be filed on March 17, 2008. D.I. 7.

2. Counsel has been, and continues to be, diligently working on respondents' answer to Mr. Yost's petition. Unfortunately, counsel has learned that the Delaware Superior Court Prothonotary has been unable to locate the files necessary to respond to Mr. Yost's claims. Counsel has requested the files and anticipates that they will be available within the next week. In the event that the Superior Court is unable to provide copies, counsel will contact the Delaware Supreme Court in an effort to obtain the needed documents.

3. Under Habeas Rule 4, the Court has the discretion to give respondents an extension of time exceeding the 40-day limit in Civil Rule 81(a)(2). *Clutchette v. Rushen*, 770 F.2d 1469, 1473-74 & n.4 (9th Cir. 1985); *Kramer v. Jenkins*, 108 F.R.D. 429, 431-32 (N.D. Ill. 1985). The comment to Rule 4 expressly states that the district court has "the discretion to take into account various factors such as the respondent's workload" in determining the period of time that should be allowed to answer the petition.

4. This is respondents' second request for an extension of time in this case.

5. Respondents submit that an extension of time to and including May 15, 2008, in which to file an answer is reasonable. Respondents submit herewith a proposed order.

/s/ Kevin M. Carroll
Deputy Attorney General
Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 577-8500
Del. Bar. ID No. 4836

DATE: April 14, 2008

RULE 7.1.1 CERTIFICATION

I hereby certify that I have neither sought nor obtained the consent of the petitioner, who is incarcerated and appearing *pro se*, to the subject matter of this motion.

/s/ Kevin M. Carroll
Deputy Attorney General

Counsel for Respondents

Date: April 14, 2008

CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2008, I electronically filed the attached documents with the Clerk of Court using CM/ECF. I also hereby certify that on April 14, 2008, I have mailed by United States Postal Service, the same documents to the following non-registered participant:

Michael Yost
No. 323984
Howard R. Young Correctional Institution
P.O. Box 9561
Wilmington, DE 19809

/s/ Kevin M. Carroll
Deputy Attorney General
Department of Justice
820 N. French Street
Wilmington, DE 19801
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Kevin.Carroll@state.de.us

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)
 Respondents.)

ORDER

This ____ day of _____, 2008,

WHEREAS, respondents having requested an extension of time in which to file an answer, and

WHEREAS, it appearing to the Court that the requested extension is timely made
and good cause has been shown for the extension,

IT IS HEREBY ORDERED that respondents' answer shall be filed on or before May 15, 2008.

United States District Judge